

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs March 7, 2005

JAY C. HASSLER v. TENNESSEE DEPARTMENT OF SAFETY

Appeal from the Circuit Court for Davidson County
No. 03C958 Hamilton Gayden, Judge

No. M2003-02927-COA-R3-CV - Filed January 9, 2006

This appeal involves the forfeiture of thirty-three vehicles and \$32,150 in cash seized pursuant to forfeiture warrants obtained by the Fifteenth Judicial District Drug Task Force. A person claiming ownership of the vehicles and cash filed a petition with the Tennessee Department of Safety requesting their return. The Department denied the petition following a contested case hearing, and the claimant filed a petition for review in the Circuit Court for Davidson County. The trial court thereafter upheld the forfeiture. The claimant asserts on this appeal that Tenn. Code Ann. § 40-33-204 (2003), the statute authorizing the issuance of forfeiture warrants, is unconstitutional and that the evidence does not support the hearing officer's and trial court's conclusion that he has no ownership interest in the seized property. We affirm the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

J. Shannon Garrison, Dayton, Tennessee, for the appellant, Jay C. Hassler.

Paul G. Summers, Attorney General and Reporter; Lizabeth A. Hale, Assistant Attorney General, for the appellee, Tennessee Department of Safety.

MEMORANDUM OPINION¹

John Paul Hassler is a drug dealer. He pled guilty to two counts of selling cocaine in November 1999 and was sentenced to two concurrent five-year terms. After serving a brief jail

¹Tenn. Ct. App. R. 10 provides:

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

sentence, he was released on probation.² Following John Hassler's release from custody, he and his father, Jay C. Hassler, opened a used car business in Crossville, Tennessee to provide John Hassler with a way to make a living and to keep him out of trouble. Jay Hassler gave John Hassler \$10,000 to help start the business and obtained the used car dealer's license in his name because John Hassler's criminal record prevented him from obtaining the license. The original inventory consisted of vehicles that John Hassler already owned. Jay Hassler was not actively involved in the operation of the business.

Federal and state authorities placed the car lot under surveillance because they suspected that John Hassler was using the business as a cover to sell illegal drugs. An undercover informant cooperating with the authorities had several telephone conversations with John Hassler at the car lot to arrange to sell him a kilo of cocaine. They eventually agreed to complete the sale on July 26, 2001 at a gas station in Crossville. John Hassler arrived at the gas station driving a vehicle bearing drive out tags from the car lot. He was arrested when he proposed to drive to another location to complete the transaction. At the time of his arrest, John Hassler had \$32,150 in his possession.

On August 1, 2001, the director of the Fifteenth Judicial District Drug Task Force³ obtained forfeiture warrants from the Circuit Court for Wilson County authorizing the seizure of the cash in John Hassler's possession when he was arrested, the automobile John Hassler was driving when he was arrested, and the vehicles on the car lot when John Hassler was arrested. In support of the warrant, the director stated (1) that John Hassler had made arrangements to purchase the cocaine using the car lot's telephone, (2) that John Hassler had used an automobile in the car lot's inventory in an attempt to purchase the cocaine, (3) that John Hassler "had previously received large quantities of [c]ocaine in numerous cars from Hassler's Auto Sales and his 2001 Ford Mustang Bullet," and (4) that John Hassler had comingled the funds used to operate the car lot with the proceeds from his illegal drug trafficking.

Jay Hassler filed a timely petition with the Tennessee Department of Safety seeking to recover most of the vehicles seized from the car lot and \$32,150. He asserted that he owned the car lot, that the vehicles and money belonged to him, and that he was unaware of his son's illegal activities or that the car lot was being used as a front to sell illegal drugs. On August 16, 2002, an administrative law judge (ALJ) employed by the Secretary of State conducted a contested case hearing. Thereafter, On January 21, 2003, the ALJ filed an initial order concluding that the vehicles and cash were subject to forfeiture pursuant to Tenn. Code Ann. § 53-11-451(a)(6)(A) (2005). The ALJ also determined that Jay Hassler had failed to demonstrate any legal interest in the cash found on John Hassler when he was arrested or any ownership or other interest in the automobiles that had been seized. This initial order became final on February 5, 2003.

² See *State v. Hassler*, No. E2002-00247-CCA-R3-CD, 2003 WL 327507 (Tenn. Crim. App. Feb. 13, 2003) (No Tenn. R. App. P. 11 application filed).

³ Tenn. Code Ann. § 8-7-110 (Supp. 2005) describes the powers of drug task forces.

On April 1, 2003, Jay Hassler filed a petition in the Circuit Court for Davidson County seeking judicial review of the ALJ's final order upholding the forfeiture of the cash and vehicles. The record of the administrative proceedings was filed with the court on June 25, 2003. Thereafter, on November 12, 2003, the trial court filed a memorandum expressly adopting the ALJ's findings of fact and conclusions of law and affirming the February 5, 2003 final order. Jay Hassler perfected this appeal.

Jay Hassler asserts that Tenn. Code Ann. § 40-33-204 (2003) violates the Fourteenth Amendment to the United States Constitution and Tenn. Const. art. I, § 8. The statute permits any state judge to issue a forfeiture warrant even when the property is not located within the judge's jurisdiction. Mr. Hassler argues that persons seeking to recover seized property could be placed at a disadvantage because access to the records of the proceeding to obtain the forfeiture warrant might be more difficult to obtain.

We conclude that Tenn. Code Ann. § 40-33-204 is constitutional both on its face and as applied in this case. Mr. Hassler has presented no authority for the notion that a court of record cannot constitutionally issue a warrant for the forfeiture of property that is not located in its judicial district. In addition, he has presented no evidence that he or his lawyer experienced any difficulty in obtaining the information required to be kept by Tenn. Code Ann. § 40-33-204(b) from the Circuit Court for Wilson County.

Mr. Hassler also insists that the record does not contain sufficient evidence to support the ALJ's and the trial court's conclusion that he lacked a sufficient ownership interest in the seized cash and vehicles to be entitled to their return. Like the trial court, we have carefully reviewed the record of the contested case hearing and have determined that the record contains substantial and material evidence supporting the ALJ's conclusions.

We affirm the trial court's November 12, 2003 memorandum affirming the ALJ's February 5, 2003 final order dismissing Jay Hassler's petition for the return of the seized property at issue in this case. We remand the case to the trial court for whatever further proceedings may be required, and we tax the costs of this appeal to Jay C. Hassler and his surety for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., P.J., M.S.